

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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November 2, 2001

Moses S. Hall, Esq.
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Fullerton, CA 92631

Re: Public Works Case No. 2001-011
Luna Elementary School Modular Buildings
B. E. McMurray/Modtech, Inc.

Dear Mr. Hall:

This letter constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). You have inquired as to whether the on-site work related to the supply of modular buildings on a public works site is covered work. Based on my review of the facts of this case and an analysis of the applicable law, I have determined that the work being done by Modtech, Inc. ("Modtech") to install modular buildings as a part of the construction of Luna Elementary School ("Project") is a public work subject to the payment of prevailing wages.

Factual Background

Victor Elementary School District ("District") entered into a contract with B. E. McMurray Construction, Inc. ("McMurray") to construct Luna Elementary School for \$7,545,000. The Project included the construction of five (5) permanent buildings, relocatable classroom buildings, covered walkways and miscellaneous items including site clearing, rough and finished grading, asphalt/concrete paving, storm drainage and landscape irrigation. As a part of the Project, McMurray subcontracted with Modtech to furnish and install modular classrooms for \$1,134,280.

The classrooms were manufactured at one of Modtech's three California factories and transported to the Project site. At the school site, Modtech installed the buildings in accordance with the architect's plans and specifications. Modtech's subcontract, however, excludes all site work in or around the buildings, foundation work, final plumbing, gas and electrical connections

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outside or below the buildings, and all ramps, landings, and handrails.

Discussion

Labor Code section¹ 1720(a) defines public works to mean: "Construction, alteration, demolition, or repair work performed under contract and paid for in whole or in part out of public funds." Section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

The parties dispute the nature and extent of Modtech's site work on this Project. McMurray characterizes it as a significant amount of work on site erecting and finishing of the buildings. Modtech describes it as incidental set-up limited to minor leveling, skirting and bracing. Irrespective of its characterization, however, Modtech's on-site installation of the modular buildings involves construction and alteration done under contract and paid for out of public funds. Therefore, the work being done by Modtech on-site on this Project is a public work within the meaning of section 1720(a) and is subject to the payment of prevailing wages.

In addition, the work being done at the school site by Modtech is part of the larger public work job contracted by McMurray with the District. Consequently, Modtech's site workers are employed in the execution of this public work and entitled to be paid prevailing wages under section 1772.

Modtech's reliance on earlier Department determinations as precedent in support of its position that its work is not subject to the payment of prevailing wages is misplaced. Government Code section 11425.60, subsections (b) and (c) allow an administrative agency to select those decisions that contain significant legal or policy determinations to be designated as precedential. An index of these significant precedential decisions is to be publicized in the California Regulatory Notice Register (CRNR). Government Code sections 11425.10(a)(7) and 11425.60(a) state clearly that no agency decision can be relied on unless it has

¹ All statutory references are to the California Labor Code.

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been designated as precedential. As Modtech acknowledges, none of the determinations submitted by it were designated as precedential. Hence, Modtech cannot rely on these earlier decisions.

Finally, in your determination request you ask for guidance regarding two other issues. First, you ask what percentage of the project work must be performed on-site before prevailing wages must be paid. As indicated above, any site work involving construction and alteration done under contract and paid for out of public funds is subject to the payment of prevailing wages. Second, you ask what form of payroll records will comply with the prevailing wage laws. Section 1776(a) specifies the payroll information that must be kept by the contractor or subcontractor. Section 1776(b) states that the payroll records must be certified and made available for inspection as provided therein. Section 1776(c) indicates that the certified payroll records are to be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

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